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(19)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CLARENCE FRANKLIN :

Plaintiff, :

vs. :

CIVIL ACTION NO.: 1:CV-00-0238

PENNSYLVANIA DEPARTMENT :  
OF CORRECTIONS, ET AL. :

(Judge Kane)

Defendants :

FILED  
SCRANTON

JUL 16 2001

**PLAINTIFF'S BRIEF TO DEMONSTRATE  
EXHAUSTION OF ADMINISTRATIVE RELIEF**

dm  
DEPUTY CLERK**Background**

On June 6, 2001, the Honorable Judge Yvette Kane, ordered that a letter received from plaintiff's counsel be construed as a motion for an enlargement of time in which to demonstrate exhaustion of administrative remedies. Upon granting plaintiff's motion (Doc. No. 17) the court directed plaintiff to submit demonstration of exhaustion within twenty (20) days of the date of the order.

**Discussion**

Pursuant to 42 U.S.C. § 1997(e) (a), prisoners confined in correctional facilities are required to exhaust available administrative remedies prior to commencing an action under 42 U.S.C. § 1983. Plaintiff, Clarence Franklin, avers that prior to filing the within civil rights action, he sought informal resolution of his complaints against SCI -Camp Hill Correctional Officer Robert Via, et al., Specifically, on or about February 21, 1998, plaintiff notified SCI-Camp Hill authorities of C/O Robert Via's actions and inactions in causing the injury to his finger. See, Inmate's Request to Staff Member, attached hereto as Exhibit "A". Plaintiff was advised, inter alia, "it is up to the superintendent to authorize an investigation." See, Section 8.

Disposition, of Exhibit "A".

On or about February 23, 1998, plaintiff submitted another request for assistance. This time, plaintiff voiced his frustrations about the conduct of various SMU staff members, regarding his injuries caused by C/O Via. Plaintiff intimated the aforesaid correctional officers made racist remarks, and manufactured fake information against him for reasons germane to C/O Via, and the incident which precipitated this lawsuit. The Unit Manager was asked to put an end to it. See, Inmate's Request to Staff Member, attached hereto as Exhibit "B".

Plaintiff waited to receive a written response to his initial request for assistance. On or about March 5, 1998 plaintiff submitted an Official Inmate Grievance form to Superintendent, Kenneth Kyler. Plaintiff expressed his concerns with having informed Grievance Coordinator, Livingood, about the subject incident, and not receiving any response. See, Official Inmate Grievance, attached hereto as Exhibit "C". Despite the efforts taken to redress his complaints, plaintiff patiently awaited for an official response.

More than seven (7) weeks following the incident with C/O Via, plaintiff documented his concerns in a second Official Inmate Grievance form, dated April 14, 1998. Although the tenor of the second grievance is not about C/O Via, plaintiff expressly stated, "...I haven't heard anything from my last grievance ..... # CAM-0314-98. [Involving C/O Via] . See, Official Inmate Grievance, attached hereto as Exhibit "D". On or about April 20, 1998, plaintiff received written notice from Grievance Coordinator, Ben Livingood, that the last grievance is being returned because it raises the same issues that had been addressed before in Grievance No. CAM-0314-98. See, Memo from Ben Livingood to Clarence Franklin, attached hereto as Exhibit "E". Contrary to the Coordinator's contentions, plaintiff avers he never received a written response to his grievance about C/O Via's actions on February 20, 1998.

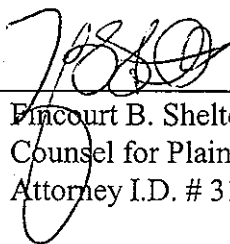
The Court now has evidence of plaintiff's attempts to informally and officially redress his complaints to officials at SCI-Camp Hill. Despite all efforts undertaken by plaintiff, no official action was taken. Having exhausted his administrative remedies, plaintiff sought the advice of counsel. This civil rights action was filed to redress the injuries and indignities inflicted upon inmate, Clarence Franklin, by SCI-Camp Hill Correctional Officers acting under color of state law.

WHEREFORE, plaintiff prays the Court will allow this case to go forward with all dispatch for trial on the merits.

Respectfully submitted,

FINCOURT B. SHELTON & ASSOCIATES, P.C.

By: \_\_\_\_\_

  
Fincourt B. Shelton, Esquire  
Counsel for Plaintiff  
Attorney I.D. # 31598

Dated: \_\_\_\_\_



## Exhibit "A"

(4)

DC-135A

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS

## INMATE'S REQUEST TO STAFF MEMBER

## INSTRUCTIONS

Complete Items Number 1-7. If you follow instructions in preparing your request it can be disposed of more promptly and intelligently.

1. TO (NAME AND TITLE OF OFFICER)

Unit Manager Mr. Wood

2. DATE

2-21-98

3. BY (INSTITUTIONAL NAME AND NUMBER)

CLARENCE FRANKLIN CUC-600

4. COUNSELOR'S NAME

Mr. Chambers

5. WORK ASSIGNMENT

6. QUARTERS ASSIGNMENT

Mae Mods EBLK A2-20

7. SUBJECT. STATE COMPLETELY BUT BRIEFLY THE PROBLEM ON WHICH YOU DESIRE ASSISTANCE. GIVE DETAILS

ON 2-20-98 while preparing for yard at 7:45 am I was putting on my jumpsuit, so as I only had two buttons to button up I ask C/O Via could he put my socks on the panel which they were on my cell door handle where I couldn't reach them he (C/O Via) then stated to me did I want to go out for my yard, so I then ask C/O Via why because I ask you a question so he (C/O Via) then grab my socks and put them on my sneaks and started to close the panel, so I started crabbing my staff and my finger got caught in the bottom of the panel and I ask C/O Via to wait a minute because my finger was stuck but C/O Via said fuck my finger and closed the panel and cut clean through my finger completely off and it was 7

8. DISPOSITION: (DO NOT WRITE IN THIS SPACE)

I saw that you have requested an investigation through the SCIC Security Office. It is up to the Superintendent to authorize an investigation. I will watch staff for inappropriate comments and take appropriate action if any are discovered.

☐ TO DC-14 CAR ONLY☐ TO DC-14 CAR AND DC-15 IRS

STAFF MEMBER

DATE

done on purpose, because when I stated to him my finger was stuck and he (C/O Via) continue closing the panel there no question it was ~~was~~ done on purpose and then if you would look over the misconduct I was given my C/O Via to cover or try to cover his wrong up you will see the mistakes he made in the misconduct and now I know he will be coming after me or sending some of his CO workers at me, but I want this whole thing investigated, Thank you!

Unit Manager Mads SMU Mr. Ward

Unit Manager Mads SMU Mr. Ward

## Exhibit "B"

(2)

DC-135A

## COMMONWEALTH OF PENNSYLVANIA

## DEPARTMENT OF CORRECTIONS

## INMATE'S REQUEST TO STAFF MEMBER

## INSTRUCTIONS

Complete Items Number 1-7. If you follow instructions in preparing your request, it can be disposed of more promptly and intelligently.

1. TO: (NAME AND TITLE OF OFFICER)

Unit Manager, Mr. Ward

2. DATE

2-23-98

3. BY: (INSTITUTIONAL NAME AND NUMBER)

Clarence Franklin CU0660

4. COUNSELOR'S NAME

Mr. Chambers

5. WORK ASSIGNMENT

6. QUARTERS ASSIGNMENT

Mod 5 E BIK A2-20

7. SUBJECT. STATE COMPLETELY BUT BRIEFLY THE PROBLEM ON WHICH YOU DESIRE ASSISTANCE. GIVE DETAILS.

Look Mr. Ward I am having a problem with some of your SMU staff, your LT. Cooney, Sgt. Shaw, C/O Hoover C/O Romig they all keep antagonizing me about my finger making racist remarks and so forth, but they are suppose to be professional at their job, how is it that Sgt. Shaw has to call C/O's into my cell to look at my finger like it's some type of showcase, so I would appreciate it if you would tell them to leave me alone and putting false information in my 17X trying to make this pattern with me, because they know C/O Via was wrong and tried to cover up his wrongness by given me a misconduct that was a lie all around and I would like to speak to you!

8. DISPOSITION: (DO NOT WRITE IN THIS SPACE)

☐ TO DC-14 CAR ONLY☐ TO DC-14 CAR AND DC-15 IRS

STAFF MEMBER

DATE



## Exhibit "C"

DC-804  
PART 1COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
P.O. BOX 538  
CAMP HILL, PA. 17001-0598

OFFICIAL INMATE GRIEVANCE

GRIEVANCE NO.  

TO: GRIEVANCE COORDINATOR <u>Superintendent Kylee</u>	INSTITUTION <u>SCI Camp Hill</u>	DATE <u>2-5-98</u>
FROM: (Commitment Name & Number) <u>Clarence Franklin 240660</u>	INMATE'S SIGNATURE <u>Clarence Franklin</u>	
WORK ASSIGNMENT <u> </u>	QUARTERS ASSIGNMENT <u>Room E BIK 22-20</u>	

## INSTRUCTIONS:

1. Refer to the inmate handbook Page 12 and DC-ADM 804 for information on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner.
3. Next, you are required to list in Block B the specific actions you have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.

## A. Brief, clear statement of grievance:

Between February 20th or 22 I put in a grievance to the grievance coordinator. I talked about my incident on Feb 20th which I wrote you about on a request slip, which I haven't gotten any response yet, but I am still going through the same problems with some of your staff and when I address these problems to the commanding officers here in the SIMU LT. Casey, Unit Manager, and Sgt. Shaw I get no results from anyone, but plus my problems are with LT. Cooney, Sgt. Shaw, Chittaway, C/O Vic, C/O Pinsky, and C/O Rhoades, because the last grievance I filled out was sent back to me because I received a memorandum for this incident which was to cover up C/O Vic's wrong doing, which I was found guilty of all charges and the C/O who was there said

## B. Actions taken and staff you have contacted before submitting this grievance:

I did none of this and I wanted this C/O for his witness on the witness Unit Manager Wood, Captain Casey, and Central office!

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Grievance Coordinator

Date

## Exhibit "D"

DC-804  
PARTRECEIVED  
SUPT. SCDC

APR 17 1998

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
P.O. BOX 598  
CAMP HILL, PA. 17001-0598OFFICIAL INMATE GRIEVANCE  
ReferredGRIEVANCE NO. 3

TO: GRIEVANCE COORDINATOR <u>Mr. Livingood</u>	INSTITUTION <u>SCI Camp Hill</u>	DATE <u>4-14-98</u>
FROM: (Commitment Name & Number) <u>Clarence Franklin C40660</u>	INMATE'S SIGNATURE <u>Clarence Franklin</u>	
WORK ASSIGNMENT	QUARTERS ASSIGNMENT <u>Mod S E BIK A2-20</u>	

## INSTRUCTIONS:

1. Refer to the inmate handbook Page 12 and DC-ADM 804 for information on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner.
3. Next, you are required to list in Block B the specific actions you have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.

## A. Brief, clear statement of grievance

On the above date while collecting the dinner trays C/O 'Hoover' said to C/O Johns. I wonder how Franklin liked his food after I pissed in it and this C/O has been harassing me for about two months now since my finger tip has been cut off on 2-20-98 and I have reported this to the Unit Manager and still hasn't nothing been done about C/O Hoover harassing me and I would like something done, because he thinks he is above the law and that nothing will be done about his harassing me and not only the racial comments, smart remarks, but now he wants to play with my food, so if something isn't done about C/O Hoover harassment to me then my lawyer will deal

## B. Actions taken and staff you have contacted before submitting this grievance: with this.

Reported C/O Hoover to Unit Manager Ward several times and nothing has been done and I haven't heard anything from my last grievance you sent to Mr. Ward for him to resolve. Grievance # Cam-0314-98

Your grievance has been received and will be processed in accordance with DC-ADM 804

Signature of Grievance Coordinator

Date

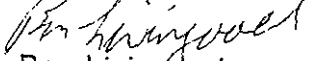
## Exhibit "E"

COMMONWEALTH OF PENNSYLVANIA

DATE: April 20, 1998

SUBJECT: Returned Grievance

TO: Clarence Franklin  
E Block

FROM:   
Ben Livingood  
Grievance Coordinator

The attached grievance is being returned to you because it raises the same issue as that already addressed in response to your Grievance No. CAM-0314.98.

attachment

cc: Superintendent Kyler  
Deputy Palakovich  
Deputy Petruccio  
Mr. Ward  
Central File  
File

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Defendants :

(Judge Kane)


**CERTIFICATION OF SERVICE**

I, Fincourt B. Shelton, Esquire, hereby certify that I am this day depositing in the United States mail, a true and correct copy of the foregoing Plaintiff's Brief To Demonstrate Exhaustion of Administrative Relief upon the persons and in the manner indicated below:

**MANNER OF SERVICE:**

first-class mail, postage prepaid

Bill Fairall, Esquire  
PA Department of Corrections  
Office of Chief Counsel  
55 Utley Drive  
Camp Hill, PA 17011

  
\_\_\_\_\_  
Fincourt B. Shelton, Esquire  
Attorney for Plaintiff  
Attorney ID# 31598

Dated: July 12, 2001